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COLLAR & ROE, P.C.
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Roslyn, NY 11576

EXAMINER

HESS, DANIEL A

ART UNIT PAPER NUMBER

2876

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/685,969

Applicant(s)

HOLZER, HELMUT

Examiner

Daniel A. Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 84-88 is/are allowed.
- 6) ☒ Claim(s) 59-81 is/are rejected.
- 7) ☒ Claim(s) 82 and 83 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/2/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This action is in response to applicant's 5/2/2005 mailing.

Rejections that had been made under 35 USC 112 are rendered moot; however some of the same mistakes are repeated.

Response to Arguments

Applicant's arguments filed 5/2/2005 have been fully considered but they are not persuasive. Wan et al. (US 2002/0121980) has shown a separate RFID tag on different clothing articles which are then matched together by a control unit based on the ID of the various articles.

The center of the applicant's arguments appear to relate to the fact that the matching of a ski boot with a ski is very different from the matching of different clothing articles together to form an outfit.

The examiner does not see this different and suggests that the applicant's invention as recited in claim 59 could just be a particular application of Wan's technology. In other words, it is a special case of Wan's technology where the two different articles of clothing are a boot and a boot binding.

In the examiner's view, what is not patentable is the fact of matching simply based on a pre-stored matching, such as, for example, a record in a database linking ski Alpha with binding Beta. Why? Because such pre-stored matching of wearable articles are fundamentally the kinds of matches that Wan et al. makes.

On the other hand, a system which actually analyzes a particular combination based on the certain particular named properties of the boot and binding respectively, to judge whether a particular combination is safe, may not be taught Wan et al. Such a system would not feature matching based on prestored matching pairs, but would be based on on-the-fly analysis related to some particular named properties of the boot and the binding, which is clearly not taught in Wan et al. because Wan et al. does not relate to boots and bindings.

There appears to be support for this in the specification (US PG Pub 20040074966, which corresponds to the instant application); the applicant will have to determine what has support in the specification:

[0035] In another embodiment of the electronic tracking system, at least one of the code transmitters assigned to a retaining mechanism contains and displays data relating to the properties and/or settings of the retaining mechanism, which means that data pertaining to the settings of the retaining mechanism, for example, can be read and stored and this data can then be used to run a check or ensure that the retaining mechanism matches a specific sport shoe or user.

[0037] Also of advantage is another embodiment of the electronic tracking system, in which at least one code transmitter assigned to a board-type runner device contains and displays data relating to the properties and/or settings of the board-type runner device, so that data pertaining to specific sports equipment can be read and stored on an automated basis and a match made with other sporting articles or in respect of a user.

[0045] In another embodiment of the electronic tracking system, the control unit checks the data of the code transmitter of the retaining mechanism and the data of the code transmitter of the user or the data of a personal user-end control unit to ascertain correct usage or correct assembly of combinations, the advantage of which is that because the settings of the retaining mechanism for a sport shoe are checked along with the user data, an inadmissible setting or a change made to such a setting can be detected.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 61: A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 61 recites the broad recitation 3 m, and the claim also recites 1 m, which is the narrower statement of the range/limitation.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 59-66, 69, 72 and 75-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan et al. (US PG Pub No. 2002/0121980) in view of Lippert (WO 01/82235).

Re claim 59:

The following are among the relevant teachings of Wan et al.; code transmitters are on individual articles of clothing, which are held in a wardrobe closet which acts as a separate control unit which determines, among other things, if particular items are correctly matched together. Also notable is especially figure 4, as well as figures 2 and 3.

[0008] In one embodiment, the advantages of the present invention are realized by a method of aiding a user in the selection of clothing. **The method includes the steps of automatically identifying clothing stored in a wardrobe closet and automatically identifying a first piece of clothing that has been removed from the wardrobe closet. Next, the wardrobe closet automatically determines a second piece of clothing that is appropriate to wear with the**

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first piece of clothing. An identification of the second piece of clothing is presented to the user.

[0036] FIG. 3 shows a schematic diagram of a wardrobe closet in accordance with one embodiment of the invention. **A radio frequency (RF) receiver 302 may scan RF tags or sensors that are embedded in clothing. Texas Instruments manufactures suitable receivers and tags under the brand name Tag-it.** The information obtained from radio frequency receiver 302 is transmitted to a serial port interface 304. Computer 204 stores information obtained from serial port interface 304 in a clothing section 308 of a memory 306. Of course, the present invention may be implemented with other tags or sensors such as Electronic Product Code (EPC) tags. Furthermore, RF receiver 302 may be replaced with a receiver operating at a different frequency, an optical reader or another reader capable of reading tags or sensors.

[0039] One skilled in the art will appreciate that the present invention can be implemented with several wardrobe closets. In one embodiment, each wardrobe closet has a separate RF receiver for identifying clothing and each of the RF receivers may be coupled to a common computer. Alternatively, **each wardrobe closet may include a computer** and the computers may be coupled together.

[0041] FIG. 4 illustrates a method that aids a user in the selection of clothing in accordance with one embodiment of the invention. First, in step 402, the wardrobe closet identifies clothing that has been removed by the user. RF receiver 302 (shown in FIG. 3) may scan the items of clothing stored in wardrobe closet 200. By determining the items present during two successive scans, the articles of clothing removed from the wardrobe closet may be identified.

[0042] **In step 404, the wardrobe closet suggests a matching article of clothing. For example, when the user removes a shirt, the wardrobe closet may identify a matching pair of pants, shoes and a tie that form a coordinated outfit with the selected shirt. The suggestions provided by the wardrobe closet may be updated as a user removes additional articles of clothing. For example, after the user removes a shirt and a pair of pants, the wardrobe closet may determine which pair of shoes form a coordinated outfit with the selected shirt and pants. One skilled in the art will appreciate that computer 204 may include a software program for making such determinations based on factors such as style and color.**

Regarding displaying of data, this is achieved indirectly: there is contained in each code transmitter of Wan et al. a code which links to a computer that can retain and display properties of an article.

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Wan et al. lacks in that the claimed articles are not specifically sporting articles.

Lippert teaches the use of RFID transponder-type systems on sporting equipment; in particular, skis.

In view of Lippert's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known article tracking system with sporting equipment because one can thus be assisted by the wardrobe in matching *sporting* equipment.

Re claim 60 and 61: The range cited would be typical for RFID.

Re claim 62: Lippert teaches that a tag may be on skis; for a snowboarder, equivalent locations could be on a snowboard, boot or binding.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tag in these locations because at a typical ski resort a large proportion of the users are snowboarders rather than skiers.

Re claim 63: Each article of clothing has a code transmitter in Wan et al. that is connected to the wardrobe, which acts as the control unit.

Re claim 64: The wardrobe has a computer 204, [0031; 0036]; it is software-driven [0045].

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a commercially available computer because this would be less expensive.

Re claim 65: See figure 2: The wardrobe computer 204 is connected a network 206.

Re claim 66: Viewed broadly, virtually all computers are small enough to be held in the hands.

Re claim 69: See [0039]: “identify clothing” – to do this, there must be a unique code.

That the articles are sporting articles has been established by the combination.

Re claim 72: It is clear in Lippert that RFID tags are used for access to a ski resort.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known tags for access to a ski resort as taught by Lippert in the teachings of Wan et al. because this helps to control unauthorized access.

Re claim 75: RFID tags identifying a person are notoriously old and have had early applications ranging from hospital settings to ticketing.

The motive could be, as in Lippert’s application, gaining access to a particular zone.

Re claims 76 and 77: See discussion re claims 1 and 2 above.

Re claim 78: See discussion re claim 2 above, and see also figure 2 of Wan et al.

Re claim 79: An ID for an item can be considered a link to a description of that article stored in a wardrobe computer.

Re claim 80: Assigning of ID numbers in Wan et al. must occur at a particular point to avoid assigning duplicate ID numbers.

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Claims 70-71, 73, 74, 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan et al. as modified by Lippert as applied to claim 58 above, and further in view of Vock et al. (US PG Pub No. 2003/0163287).

Re claim 70, 81: Wan et al. as modified by Lippert as applied to claim 1 above fails to teach that performance statistics are collected.

Vock et al. teaches [0235] speed data and other data pertaining to a skier can be collected by such a tag.

In view of Vock et al.'s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known performance data collection system to provide notice if a skier is behaving recklessly.

Re claim 71: In Vock et al. [0235] a user may wear a receiver to receive performance data detected by MMD (a motion detecting sensor).

Re claims 73, 74: In Vock et al. [0235] an LED indicates excessive speed. As a matter of design choice and so the light can be easily seen, it may be desirable to put this LED on a pair of skis directly.

Allowable Subject Matter

Claims 82 and 83 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 84-88 are allowed.

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Re claims 82 and 83: The prior art of record fails to teach in the context of the entire claim taken as a whole that the electronic tracking system detects either a release force or a z-value.

Re claims 84: The prior art of record fails to teach in the context of the entire claim taken as a whole that a network detects that the sporting articles belong together on the same intended side.

Re claim 88: The prior art of record fails to teach in the context of the entire claim taken as a whole the recited distance measuring and detecting system to a communication response point.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH

**DANIEL STCYR
PRIMARY EXAMINER**

